IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9666 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARUN GULAM MALJI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAI BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/2000

ORAL JUDGEMENT

1. The petitioner herein has challenged the detention under the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short). The District Magistrate, Bharuch, in exercise of powers conferred upon

him under Section 3(1) of the PASA Act passed order of detention against the petitioner on 27th July, 2000, whereby the petitioner was detained from 28th July,2000. The said order is under challenged.

2. The grounds of detention denotes that the detaining authority referred to three crimes registered against the petitioner before Vagra Police Station under Sections 379, 504 of the Indian Penal Code and under Sections, 3 and 7 of the Essential Commodities Act. Offences came to be registered on 3rd October, 1999, 8th November, 1999 and 2nd July, 2000. The detaining authority placed reliance on the complaints filed in the above said crimes registered against the petitioner. It was stated in the grounds that petitioner from the pipe line of ONGC committed theft of oil damaging the national property. It was also observed that the petitioner is indulged in illegal activities. The detaining authority also placed reliance upon the statements of three witnesses, who on assurance of anonymity offered statements against the petitioner regarding the incident, in which the petitioner had beaten respective witness, whereby the public order was disrupted and due to fear of the petitioner, nobody was prepared to give statements or complaints against the petitioner. From the above material, it appears that the detaining authority came to the conclusion that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act.

3. Learned Advocate Mr. H.R. Prajapati for the petitioner and learned Advocate Mr. Udai Bhatt for the respondents were heard.

4. Order of detention was assailed by the petitioner on various grounds. One of the grounds is petitioner submitted representation to the State Government which was not properly considered and hence the right of the petitioner guaranteed under Article 22(5) of the Constitution was jeopardized. It was urged that further detention of the detenu is therefore vitiated.

5. As per the facts of the case, it appears that, the petitioner filed representation before the State Government through his advocate on 18th August, 2000, which was duly received by the concerned Department of the Government. In this representation, the petitioner had demanded copies of the statements of the witnesses recorded in criminal cases filed against the petitioner to make effective representation. However, vide communication dated 29th of August, 2000, the petitioner

was informed that his representation was rejected without any reference to the copies of the documents asked for by the petitioner. The compilation placed on record denotes that the certified copies of the statements of the witnesses relied by the detaining authority are not supplied to the petitioner. Therefore, the petitioner demanded copies of those statements vide his representation dated 18th August, 2000. As aforesaid, however, without referring to the copies of the documents vide communication to the petitioner dated 29.8.2000 the petitioner was informed that his representation dated 18th August, 2000 was rejected by the Government. This clearly denotes that the right of the petitioner to make effective representation guaranteed under Article 22(5) of the Constitution is jeopardized and in these circumstances further detention of the detenu is vitiated. The order of detention therefore is required to be set aside on this ground alone.

6. In view of the above discussion, the petition is allowed. The order passed by the District Magistrate, Bharuch on 27th July, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. The petitioner - Harun Gulam Malji is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair